

Message Text

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13

ACTION L-03

INFO OCT-01 EUR-25 EA-11 IO-12 ADP-00 SCI-06 ACDA-19 GAC-01

AEC-11 CIAE-00 DODE-00 PM-09 H-02 INR-10 NSAE-00

NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12 NSF-04

MBFR-03 RSR-01 /160 W

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R 08 0647 Z MAY 73

FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC 887

INFO AMEMBASSY THE HAGUE

AMEMBASSY PARIS

AMEMBASSY WELLINGTON

USMISSION USUN NEW YORK

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E. O. 11652: N/ A (DECONTROL 5/8/74)

TAGS: ICJ (INTL COURT OF JUSTICE), FR, AS

SUBJECT: AUSTRALIAN PREPARATIONS FOR ICJ CASE ON FRENCH
NUCLEAR TESTING

REF: CANBERRA 2552

1. SUMMARY: DFA REVIEWED WITH EMBOFF MAY 8 SEQUENCE OF
EVENTS, AS GOA SEES THEM, ON ICJ HANDLING OF FRENCH NUCLEAR
TESTS. AUSTRALIAN DECISION NOT YET MADE TO TAKE ISSUE TO
ICJ BUT WILL PROBABLY BE MADE NEXT FEW DAYS. GOA BELIEVES ICJ
WILL AGREE TO ASSUME JURISDICTION, DESPITE ANTICIPATED FRENCH
RPOTESTS. GOA WILL SEEK INTERIM ACTION UNDER ARTICLE 41 OF ICJ
STATUTE TO GET RESTRAINING ORDER PROHIBITING TESTS WHILE COURT
CONSIDERS. DFA BELIEVES ARGUMENTS ON CASE COULD LAST ONE YEAR.
FRENCH EMBASSY TELLS US THAT FRENCH AMBASSADOR IN THE HAGUE
REPORTS ICJ JUDGES ARE PREPARING TO HANDLE CASE " WITH INDISCREET
ZEAL." END SUMMARY.

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2. IN CONVERSATION WITH EMBOFF MAY 8, A. H. LOOMES (FIRST ASSISTANT SECRETARY OF CONSULAR AND LEGAL DIVISION, DEPT. OF FOREIGN AFFAIRS) REVIEWED SEQUENCE OF EVENTS CONCERNING AUSTRALIAN RECOURSE TO ICJ ON NUCLEAR TESTING, AS GOA SEES MATTE R.

3. ONGOING TALKS BETWEEN AUSTRALIAN AND FRENCH SCIENTISTS (REFTEL) EXPECTED TO END MAY 8 OR 9 AND MOST LIKELY WILL NOT RESULT IN ANY CHANGE IN FRENCH DECISION TO PROCEED WITH TESTS. (NAMES OF FRENCH SCIENTISTS BADLY GARBLED IN PRESS AND INCORRECTLY REPORTED IN REFTEL. FRENCH TEAM CONSISTS OF PROF. A. GAUVENET, DR . DAVID MECHALI, MR. J. M. LAVIE, AND MR. A. CHAUSSARD.) IN NEXT FEW DAYS, AS PRIME MINISTER WHITLAM INDICATED IN REFTEL, GOA WILL THEN DECIDE WHETHER TO HAVE RECOURSE TO ICJ. LOOMES ASSUMES WHITLAM WILL DECIDE ON REFERENCE TO ICJ.

4. LOOMES SAYS HE ASSUMES FRENCH WILL CONTINUE TO CONTEST REFERENCE TO ICJ AND DENY ITS COMPETENCE ON CASE. IT IS POSSIBLE THAT FRENCH WILL DECLINE TO TAKE PART IN HEARINGS BEFORE ICJ AND MAY LIMIT RESPONSE TO WRITING LETTER TO ICJ DECLINING TO BE BOUND BY OUTCOME OF HEARING. LOOMES NOTED THAT, IN FACT, THIS IS WHAT ICELAND HAS DONE IN RECENT FISHERIES CASE BROUGHT BEFORE ICJ. LOOMES FELT THIS WOULD BE ANOMALOUS POSITION FOR FRENCH TO TAKE, SINCE THEY HAVE CONSISTENTLY SUPPORTED CONCEPT OF TAKING ISSUES TO ICJ FOR JUDGMENT AND EVEN SOUGHT TO INTRODUCE ITEM IN UNGA IN 1972, RECOMMENDING SUCH REFERENCE OF DISPUTES.

5 . ONCE ICJ RULES ON JURISDICTION (AND LOOMES ASSUMES ICJ WILL RULE IT HAS JURISDICTION, DESPITE FRENCH POSITION), AUSTRALIA WILL MOVE FOR INTERIM ACTION UNDER ARTICLE 41 OF STATUTE OF ICJ, UNDER WHICH COURT COULD ENJOIN FRANCE FROM PROCEEDING WITH TESTS WHILE CASE UNDER CONSIDERATION. LOOMES BELIEVES THAT ARGUMENTS ON SUBSTANCE COULD EASILY CONSUME UP TO A YEAR . IF FRENCH GO AHEAD WITH TESTS, DESPITE INTERIM ACTION BY ICJ UNDER ARTICLE 41, FRENCH WILL BE BRANDED AS HAVING IGNORED RULING BY MAJOR INTERNATIONAL INSTRUMENTALITY.

6. SUBSTANCE OF AUSTRALIAN CASE IS ACTUALLY BEING PREPARED BY SOLICITOR- GENERAL OF AUSTRALIA, R. J. ELLICOTT, IN LONDON, USING MATERIAL FROM VARIETY OF SOURCES. WHILE IT WAS ORIGINALLY ASSUMED ELLICOTT WOULD PRESENT AUSTRALIAN CASE, IT IS POSSIBLE THAT SENATOR MURPHY, ATTORNEY GENERAL, WILL BE AUSTRALIAN ADVOCATE.

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LOOMES SAID THAT NEW ZEALAND IS PREPARING ITS OWN CASE ON ISSUE, WHICH IT WILL PRESENT SEPARATELY. AS TO CONTENT OF AUSTRALIAN CASE, IN ADDITION TO POINTS IN PARA 4 OF REFTEL, LOOMES INDICATED THAT AUSTRALIA WILL ALSO NOTE THAT NUCLEAR TESTS ARE IN VIOLATION OF PARTIAL NUCLEAR TEST BAN TREATY. ALTHOUGH FRENCE DID NOT ADHERE TO TEST BAN TREATY, MANY OTHER STATES DID SO, AND TREATY,

OR SO AUSTRALIA WILL ARGUE, HAS BEEN ACCEPTED BY ENOUGH STATES
TO MAKE IT INTO GENERAL INTERNATIONAL LAW.

7. LOOMES ACKNOWLEDGED THAT RECOURSE TO ICJ IS SIMPLY ONE MORE
STEP IN SERIES WHICH AUSTRALIA HAS FOLLOWED TO DATE AND NOTED
THAT PREVIOUS LIBERAL- COUNTRY GOVERNMENT, IN ADDITION TO LABOR
GOVERNMENT, HAD FOLLOWED SIMILAR POLICY.

8. IN CONVERSATION EARLIER MAY 8 WITH EMBOFF, MORAWIECKI- MOREAU,
COUNSELOR OF FRENCH EMBASSY CANBERRA, COMMENTED AT SOME LENGTH
ON
APPARENT WILLINGNESS OF GOA TO PLUNGE ON AHEAD WITH COURSE OF
ACTION WHICH CAN DO VERY SERIOUS DAMAGE TO FRANCO- AUSTRALIAN
RELATIONS. HE SAID THAT MAY 7 FRENCH AMBASSADOR IN THE HAGUE HAD
CABLED TO PARIS AND OTHER FRENCH POSTS THAT JUDGES AT ICJ WERE
DISPLAYING " INDISCREET ZEAL" IN LOOKING FORWARD TO HANDLING
CASE.
RICE

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*** Current Classification *** LIMITED OFFICIAL USE
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RICE

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*** Current Classification *** LIMITED OFFICIAL USE

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